

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-160040

DATE: JUL 13 1976

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MATTER OF: Charles W. Dodge - Reimbursement of real estate expenses

- DIGEST:**
1. Employee may be reimbursed for Florida surtax incident to residence transaction. However, where amount claimed included a lump sum shown on closing statement with a breakdown showing costs of surtax and other individual costs which have already been reimbursed, reimbursement may be authorized only for amount shown as individual item for surtax.
 2. Attorney's fee for curing title on sale of property should be disallowed in the absence of a sales contract showing that the seller is required to furnish a marketable title or that it is the local custom to furnish a marketable title in selling a residence.. Balance of attorney's fees may not be reimbursed absent sufficient itemization to determine allowability of individual charges for specific services. Certifying Officer may authorize reimbursement of allowable expenses upon presentation of sufficiently itemized statement of fees.
 3. Employee who purchased residence in West Palm Beach incident to transfer may be reimbursed expense of Florida intangible property tax if normally borne by purchaser. Tax is nonrecurring and levied upon recording of instrument secured by mortgage. We interpret this to mean tax is levied only once and only incident to real estate transactions. Prior decisions to the contrary are no longer controlling.

This action is in response to a request of July 29, 1975, by D. F. Sloan, an authorized certifying officer of the Drug Enforcement Administration, Department of Justice, for our decision whether a reclaim voucher submitted by Mr. Charles W. Dodge, an employee of the Drug Enforcement Administration, may be certified for payment. The employee is claiming reimbursement for certain real estate expenses previously disallowed by the agency.

The record shows that on July 2, 1974, Mr. Dodge was transferred from Miami, Florida, to West Palm Beach, Florida, and that incident thereto he sold his former residence in Miami and purchased a new home at his new duty station. The agency paid his claim for reimbursement of real estate expenses in connection with both the purchase and sale transactions with the following exceptions:

Sale transaction:	
Florida surtax	\$130.30
Standard (Attorney) fee	145.00
Procedures curing title	85.00
Purchase transaction:	
Attorney's fee	304.50
Florida surtax	48.40
Intangible personal property tax	60.00
Documentary stamp tax	132.00

The documentary stamp tax (\$132) and the surtax (\$48.40) were disallowed by the agency because they were not paid by the employee in connection with the purchase transaction; these amounts have not been reclaimed. The employee claims the balance of the other items disallowed in the aggregate amount of \$724.80.

We have recently held that an employee may be reimbursed for payment of the Florida surtax levied on documents relating to land as a "mortgage or transfer tax" within the meaning of the Federal Travel Regulations (FTR), FPMR 101-7, para. 2-6.2(d). B-123152, January 27, 1976. However, there is a question as to the correct amount in the present case. To begin with, we note that the surtax item is shown as a notation ("Credit Buyer-Payment of sellers recording fees") on the otherwise typewritten closing statement incident to the sale of Mr. Dodge's residence at Miramar. Under the heading "Expenses of sellers" the amount of \$130.30 claimed as a Florida Surtax is broken down as follows: Record-affidavits \$3.00; Doc. stamps on deed \$100.00; Fla. surtax \$12.30. Each of these fees is related to the recording of the transaction.

In the absence of any evidence to the contrary, we are of the opinion that the more reasonable explanation for the appearance of this amount on the closing statement here is that it represents an incorrect classification of the three items rather than a separate and additional expense borne by the employee. Since the employee has already been reimbursed \$3 for recording of affidavits and \$100 for document stamps on the deed, the employee may be reimbursed \$12.30 for the Florida surtax reflected as an individual item on the closing statement.

The \$85 attorney fee to cure title on the sales transaction was disallowed by the agency as an expense of litigation for which reimbursement is precluded under FTR para. 2-6.2c. Mr. Dodge advises that this fee was necessary to remove certain liens on the property for which satisfaction had been obtained but not properly recorded. The attorney merely had to determine when settlements had been made and properly file the satisfaction with the Clerk of the Court; no litigation was involved in this procedure. Paragraph 2-6.3a of the FTR provides that employees shall furnish the appropriate forms for claiming reimbursement for expenses of real estate transactions. Included in the required supporting documents that should be furnished by the employee are copies of the sales and purchase agreement. Copies of the sales and purchase agreements were not furnished with the submission and we are unable to determine what the seller (Mr. Dodge) was required to furnish in selling his property. If the contract of sale requires Mr. Dodge to furnish a marketable title or if it is the local custom for the seller to furnish a marketable title we would have no objections to the reimbursement of Mr. Dodge for the \$85 cost for curing the title. However, on the basis of the present record we are unable to authorize payment of this fee.

In our decision B-160040, February 5, 1968, we held that the Florida intangible property tax was not reimbursable as a " * * * mortgage transfer or excise tax on the real estate transaction or 'similar fees for charges' under section 4.2d of Bureau of Budget Circular No. A-56" because the tax is not levied on the mortgage but on the promissory note in the hands of the holder which is secured by the mortgage. See also B-150304, February 18, 1972. However, while this view is still technically correct under Florida law and the current travel regulations, we note that the pertinent Florida statute provides for a non-recurring tax payable upon recording of the instrument. Sections 199.032(3), 199.052(7)(a), Fla. Stat. (1971). We interpret this to mean that the tax is levied only once and only incident to real estate transactions. In similar circumstances we have regarded the analogous Georgia intangible property tax as a relocation expense for which reimbursement is allowable. B-173373, August 27, 1973; B-182082, January 22, 1975. We are of the opinion that the same rule is for application here. Accordingly, reimbursement of the expense of the Florida intangible property tax may now be authorized if customarily paid by the purchaser (or seller, where appropriate). Prior decisions concerning reimbursement of the expense of the Florida intangible property tax which are inconsistent with this opinion are to be regarded as no longer controlling.

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The attorney's fees claimed incident to both transactions were disallowed by the agency for lack of sufficient itemization. Mr. Dodge has furnished on the reclaim voucher a listing of the services performed by the attorneys, but without a breakdown of individual charges for each specific service.

The pertinent regulation here is FTR para. 2-5.2c (May 1973) which specifies those legal and related expenses which may be reimbursed. Only those parts of the attorney's fees that represent services of the type enumerated in the regulation are reimbursable. B-169821, June 25, 1973. We have consistently held that no reimbursement may be allowed for legal services that are of an advisory nature. B-183443, July 14, 1975, and cases cited therein. The purpose of the requirement for a detailed statement of attorney's fees is to provide a basis for distinguishing reimbursable fees from those for which reimbursement may not be authorized. Reimbursement for such services will be allowed only when an itemized statement is submitted by the attorney allocating dollar amounts to each service rendered. There can be no reimbursement based upon a lump-sum bill, or upon a bill containing an itemized list of services, but no dollar amount for each service. Upon presentation by Mr. Dodge of a sufficiently itemized statement of charges by his attorney, the certifying officer may make a determination and authorize reimbursement of those fees properly reimbursable under FTR para. 2-5.2c.

Action on the voucher should be taken in accordance with the foregoing.

PAUL G. DODDING

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Comptroller General
of the United States